IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INTERNATIONAL REFUGEE ASSISTANCE PROJECT, *et al.*, Plaintiffs-Appellees, v. DONALD J. TRUMP, *et al.*, Defendants-Appellants.	No. 17-1351

MOTION TO EXPEDITE APPEAL AND SET BRIEFING DEADLINES

Pursuant to 28 U.S.C. § 1657(a), FRAP 27 and 31(a)(2), and this Court's Local Rule 12(c), defendants-appellants (the "government") respectfully move for expedited hearing of this appeal from the district court's preliminary injunction. The order on appeal enjoins enforcement of a key provision of an Executive Order, which presents an issue of national significance; courts addressing both this and an earlier Executive Order have expedited their consideration of cases such as this. The government respectfully asks this Court to enter a schedule to allow prompt, coordinated consideration of both (1) the government's appeal from the preliminary injunction entered by the district court on March 16, 2017, and (2) the government's forthcoming motion for a stay of that injunction pending appeal.

The reasons supporting expedition are set forth below, along with a proposed schedule for briefing. For the same reasons, oral argument on the appeal is appropriate, and the government is prepared to present argument following expedited briefing. A transcript of the district court hearing has been prepared, and the government believes that the parties can present briefing of this appeal on the existing record. Pursuant to this Court's Rule 27(a), counsel for plaintiffs-appellees have been notified of the government's intent to file this motion, and have informed us that they oppose this motion.

1. This case concerns plaintiffs' challenge to Executive Order No. 13,780, issued by the President on March 6, 2017, titled "Protecting the Nation from Foreign Terrorist Entry Into the United States." See 82 Fed. Reg. 13209 (Mar. 9, 2017) ("Order"). Following highly expedited briefing and a hearing, the district court entered a preliminary injunction on March 16, 2017, and denied a stay of its injunction pending appeal. The district court's preliminary injunction, which operates nationwide, prohibits the government from enforcing § 2(c) of the Order, which suspends for 90 days the entry into the United States of certain foreign nationals from six countries.

2. The government filed a notice of appeal from the district court's injunction on March 17, 2017. The Court docketed the appeal and issued a standard briefing schedule. Under that schedule, the government's opening brief is due April 26, 2017, and briefing would be completed by June 9, 2017.

3. This appeal from a preliminary injunction should be expedited to permit this Court's full review as soon as possible, with the benefit of full briefing by the parties. "[U]nder 28 U.S.C. § 1657(a) the granting or denying of a preliminary injunction is the basis for an expedited appeal." *American Bioscience, Inc. v. Thompson*, 269 F.3d 1077, 1084 n.8 (D.C. Cir. 2001). Moreover, this case presents constitutional and statutory issues of nationwide significance. The district court here enjoined the President and government agencies from enforcing a key provision of the Order, which is designed to protect national security, an interest that this Court has recognized as paramount. See, *e.g.*, *United States v. Abu Ali*, 528 F.3d 210, 240 (4th Cir. 2008) ("no governmental interest is more compelling than the security of the Nation") (quoting *Haig v. Agee*, 453 U.S. 280, 307 (1981)).

Recognizing the need for prompt consideration of the issues presented, courts adjudicating challenges to the Order, and to an earlier Executive Order, No. 13,769 (the "Revoked Order"), have expedited their review of those cases. For example, the district court in this case considered the parties' briefs and argument addressing the motion for injunctive relief over the course of five days (including a weekend). See *Int'l Refugee Assistance Project, Inc. v. Trump*, D. Md. No. 8:17-cv-00361-TDC, DE# 86. And a district court in Hawaii granted plaintiffs' motion for a temporary restraining order of two sections of the Order following briefing and a hearing conducted in seven days; that court is now considering plaintiffs' motion to convert that order to a preliminary injunction, and has entered a briefing and hearing schedule that will be completed over 9 days. *Hawaii v. Trump*, 2017 WL 1011673 (Mar. 15, 2017); see D. Haw. Civ. No. 17-00050 DKW-KSC (Orders Mar. 8 & Mar. 20, 2017). Similarly, a district court in

Washington entered a nationwide injunction concerning the Revoked Order after briefing and hearing conducted over four days. See *Washington v. Trump*, 2017 WL 462040 (W.D. Wash. Feb. 3, 2017). And the Ninth Circuit considered a stay pending appeal in that case after ordering briefing and argument conducted over three days. *Washington v. Trump*, 847 F.3d 1151 (9th Cir. 2017); reh'g en banc denied, 2017 WL 992527 (Mar. 15, 2017).

Courts of appeals considering similar cases involving constitutional and national security questions of this significance have similarly ordered expedited briefing and argument. For example, the D.C. Circuit ordered expedited briefing of the merits, completed in 18 days after the court's order, in *Kiyemba v. Obama*, 555 F.3d 1022 (2009), vacated, 130 S. Ct. 1235 (2010). See D.C. Cir. No. 08-5424 (Order Oct. 20, 2008). Similarly, that court ordered merits briefing over a 36-day period in *Munaf v. Geren*, 482 F.3d 582 (D.C. Cir. 2007, vacated 553 U.S. 674 (2008). See D.C. Cir. No. 06-5324 (Order Dec. 1, 2006). And the Sixth Circuit ordered expedited briefing to be completed within 27 days in *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002). See 6th Cir. No. 02-1437 (Order April 10, 2002). The Supreme Court has likewise expedited briefing in such cases. See, *e.g.*, *Dames & Moore v. Regan*, 453 U.S. 654, 660 (1981) (noting expedited briefing and argument schedule).

4. The government also intends to seek a stay of the district court's injunction pending appeal, and the government believes that the Court would be best served by having full briefing on the merits of the underlying appeal before ruling on that motion. The parties presented full briefs and argument to the district court in this case on an even more expedited schedule, as explained above, at the urging of plaintiffs. See *Int'l Refugee Assistance Project, Inc. v. Trump*, D. Md. No. 8:17-cv-00361-TDC, DE# 86 (order); see also DE# 83 (plaintiffs' pre-motion letter proposing schedule). The district court authorized the parties to file overlength briefs, so that it would have the benefit of full briefing before adjudicating the plaintiffs' motion for a preliminary injunction or temporary restraining order. *Id.* DE# 87 (order authorizing briefs up to 40 pages in 12-point font). Similarly, the government believes that this Court would benefit from receiving briefing on both the government's motion for a stay pending appeal and the merits. Because the government is prepared to file its appellate brief on a highly expedited basis, it is not necessary to consider the two matters separately. We urge this Court to enter a schedule that would allow full briefing of the issues on an appropriately expedited schedule.

5. The government proposes the following schedule:

- Friday, March 24, 2017: the government files its opening merits brief and its motion for stay pending appeal;
- Friday, March 31, 2017: Plaintiffs-Appellees file their response merits brief and their response to the government's stay motion;
- Wednesday, April 5, 2017: the government files its reply merits brief and its reply in support of its stay motion;
- At the earliest possible opportunity after briefing is complete, the Court should schedule oral argument.

6. Government counsel proposed this schedule to plaintiffs' counsel on Tuesday, March 21, 2017, and plaintiffs did not agree. Instead, plaintiffs proposed a significantly more extended schedule for the appellate merits briefs. Under that schedule, the government would file its opening brief on March 24 (consistent with the government's proposal), but plaintiffs' response merits brief would not be due until May 10, 2017, and briefing would not be completed until May 17, 2017. In the government's view, that would not permit the prompt, expedited review by this Court that is appropriate in light of the preliminary injunction prohibiting enforcement of a key provision of the Order, as well as the nationwide significance of the underlying legal questions. Plaintiffs also proposed to separate briefing on the merits of the appeal from briefing of the stay motion. As explained above, we believe there is no basis for such disjunctive filings or serial consideration of the issues. Instead, we urge the Court to consider the stay motion and the merits of the government's appeal together.

CONCLUSION

For the foregoing reasons, this Court should issue an expedited schedule for briefs and the government's motion for stay pending appeal.

Respectfully submitted,

SHARON SWINGLE
(202) 353-2689

/s/ H. Thomas Byron III

H. THOMAS BYRON III
(202) 616-5367
Attorneys, Appellate Staff
Civil Division
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Room 7529
Washington, D.C. 20530

MARCH 2017

CERTIFICATE OF SERVICE

I hereby certify that on March 22, 2017, I electronically filed the foregoing motion for expedited briefing schedule by using the appellate CM/ECF system.

I certify that the participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ H. Thomas Byron III
H. THOMAS BYRON III

CERTIFICATE OF COMPLIANCE

Pursuant to FRAP 32(g)(1), I hereby certify that the foregoing motion complies with the type-volume limitation in FRAP 27(d)(2)(A). According to Microsoft Word, the motion contains 1,419 words and has been prepared in a proportionally spaced typeface using Palatino Linotype in 14 point size.

/s/ H. Thomas Byron III
H. THOMAS BYRON III